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4 CHASSIN HOLDINGS CORPORATION,  
5 Plaintiff,  
6 v.  
7 FORMULA VC LTD., et al.,  
8 Defendants.

9 Case No. [15-cv-02294-MEJ](#)  
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**ORDER VACATING HEARING AND  
REQUESTING CLERK REASSIGN  
CASE;  
REPORT AND RECOMMENDATION  
ON JOINT MOTION FOR GOOD  
FAITH DETERMINATION OF  
SETTLEMENT**

12 Re: Dkt. No. 71  
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**INTRODUCTION**

15 Plaintiff Chassin Holdings Corporation (“Plaintiff”) brings this action against Defendants  
16 Formula VC Fund I GP, L.P.; Formula VC Ltd.; Renata Akhunova (together, the “Participating  
17 Defendants”); and Andrey Kessel. Plaintiff and the Participating Defendants (together, the  
18 “Settling Parties”) have filed a Joint Motion for Determination of Good Faith Settlement  
19 (“Motion”) pursuant to California Code of Civil Procedure sections 877 and 877.6. Mot., Dkt. No.  
20 71. Roberto Kampfner, counsel for Plaintiffs, and Ms. Akhunova each submitted a declaration in  
21 support of the Motion. *See* Dkt. Nos. 72 (Akhunova Decl.), 73 (Kampfner Decl.). Mr. Kessel  
22 neither joins nor opposes the Motion. Pursuant to Federal Rule of Civil Procedure 78(b) and Civil  
23 Local Rule 7-1(b), the Court finds this matter suitable for disposition without oral argument and  
24 **VACATES** the August 18, 2016 hearing.

25 Although the Settling Parties have consented to this Court’s jurisdiction pursuant to 28  
26 U.S.C. § 636(c) (*see* Dkt. Nos. 8, 19 at 7), Mr. Kessel has not done so. Accordingly, the Court  
27 **ORDERS** the Clerk of Court to reassign this case to a District Judge and **RECOMMENDS** that  
28 the Motion be granted in full as described herein.

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## BACKGROUND

2 Plaintiff initiated this action on May 21, 2015 (Dkt. No. 1) and filed its First Amended  
3 Complaint (“FAC”) on December 9, 2015 (Dkt. No. 34). Plaintiff alleges violations of the  
4 Securities Exchange Act of 1934, 15 U.S.C. § 78(j)(b), as well as claims under state law. *See*  
5 FAC.

6 Plaintiff alleges Defendants solicited it to invest in Formula VC Fund I, L.P. (the “Fund”),  
7 and that Defendants made material misrepresentations regarding their expertise in investing in  
8 technology companies and their ability to bring additional investors into the Fund. Plaintiff  
9 alleges, for example, that Defendants falsely represented that the Fund would invest in dozens of  
10 start-up companies; that Defendants would use their extensive connections to raise approximately  
11 \$60 million in additional investment for the Fund from third parties; and that Defendants had the  
12 skill and experience to deliver on these commitments. Plaintiff contends these misrepresentations  
13 caused it to invest in the Fund. *See* Mot. at 3; *see also* FAC ¶¶ 71-76, 95-99, 105-111.

14 Plaintiff contends it contributed \$3.25 million to the Fund and that at least \$750,000 of this  
15 investment was used to pay management fees. *See* Mot. at 3; *see also* FAC ¶¶ 3, 40-41, 84-85.<sup>1</sup>  
16 Plaintiff contends Defendants took hundreds of thousands of dollars in management fees to which  
17 they were not entitled.

18 Plaintiff further alleges Defendants breached their fiduciary duties to Plaintiff by failing to  
19 act with skill, care, and diligence in the conduct of the Fund and by disregarding clear conflicts of  
20 interests. Plaintiff alleges Ms. Akhunova failed to properly administer the Fund’s cash;  
21 Defendants made inappropriate investments that were not consistent with the Fund’s objectives;  
22 Defendants paid themselves unearned management fees; and Defendants failed to properly report  
23 on the Fund’s activities. *See* Mot. at 3; *see also* FAC ¶¶ 31-42, 113-124.

24 The Participating Defendants believe Plaintiff’s contentions have no merit as to them. *See*  
25 Mot. at 4. Ms. Akhunova contends any misrepresentations were made by Mr. Kessel, not the  
26 other Defendants. Akhunova Decl. ¶ 14. Participating Defendants assert Mr. Kessel is the party

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28 <sup>1</sup> The Motion and the FAC list different figures for the investment fees at issue in the action. The  
figures in the Background Section are taken from the FAC.

1 who materially misrepresented his ability to raise funds and seek out investments. Indeed, the  
2 Participating Defendants claim Mr. Kessel was brought on to provide expertise in such areas, but  
3 failed to deliver. Further, the Participating Defendants deny they took inappropriate management  
4 fees or breached their fiduciary duties to Plaintiff. Finally, the Participating Defendants assert  
5 only Mr. Kessel handled the Squirro investment, and that Ms. Akhunova questioned Mr. Kessel's  
6 lack of due diligence when making the investment. Mot. at 4.

7 The Participating Defendants also assert counterclaims against Plaintiff. *See Counterclaim*  
8 ¶¶ 161-174, Dkt. No. 37. They contend Plaintiff continues to owe them \$125,000 in management  
9 fees and that they will be entitled to future distributions from the Fund based on a \$250,000 capital  
10 account. Plaintiff denies these allegations. Mot. at 4.

11 On April 19, 2016, the Court denied Mr. Kessel's motion to dismiss for lack of personal  
12 jurisdiction over him. Dkt. No. 50. Mr. Kessel subsequently informed his attorney he no longer  
13 intended to participate in the proceedings and would take no further steps to defend the action.  
14 Taran Mot., Dkt. No. 53. The Court allowed Mr. Kessel's attorney to withdraw as counsel on the  
15 condition she continue to accept documents for service and forward them to Mr. Kessel until a  
16 substitution of counsel was filed (Dkt. No. 66); Mr. Kessel has not made any additional filings  
17 since then.

18 Plaintiff and Mr. Kessel could not reach a settlement despite efforts to resolve the matter.  
19 However, Plaintiff and the Participating Defendants were able to resolve this matter pursuant to  
20 the terms of the Settlement Agreement. *See* Akhunova Decl., Ex. A. The Settling Parties  
21 represent they reached the Agreement in good faith and after arm's-length negotiations.  
22 Akhunova Decl. ¶ 8, Kampfner Decl. ¶ 3.

### 23 **LEGAL STANDARD**

24 California Code of Civil Procedure section 877.6 permits a court to approve a settlement if  
25 it determines the settlement was made in good faith. Cal. Civ. Proc. Code § 877.6; *see also Fed.*  
26 *Sav. & Loan Ins. Corp. v. Butler*, 904 F.2d 505, 511 (9th Cir. 1990) (“section 877.6 procedures do  
27 not govern a federal action . . . [but] the substantive provisions . . . are applicable”). A finding of  
28 good faith settlement between a plaintiff and “one or more of a number of tortfeasors claimed to

1 be liable for the same tort, or to one or more other co-obligors mutually subject to contribution  
2 rights,” releases the settling defendant “from all liability for any contribution to any other parties.”  
3 Cal. Civ. Proc. Code § 877(b). In other words, a court’s determination of a good faith settlement  
4 “bar[s] any other joint tortfeasor or co-obligor from any further claims against the settling  
5 tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative  
6 indemnity, based on comparative negligence or comparative fault.” Cal. Civ. Proc. Code §  
7 877.6(c). While the settlement does not discharge any other party from liability, unless its terms  
8 so provide, “it shall reduce the claims against the others in the amount stipulated by the release,  
9 the dismissal or the covenant, or in the amount of the consideration paid for it, whichever is the  
10 greater.” *Id.* § 877(a).

11 Section 877.6 reflects “two major goals”: “the equitable sharing of costs among the parties  
12 at fault and the encouragement of settlements.” *Abbott Ford, Inc. v. Superior Ct.*, 43 Cal. 3d 858,  
13 872 (1987). A good faith settlement is one within “the reasonable range of the settling tortfeasor’s  
14 proportional share of comparative liability for the plaintiff’s injuries.” *Tech-Bilt, Inc. v.  
15 Woodward-Clyde & Assocs.*, 38 Cal. 3d 488, 499 (1985). When determining whether a settlement  
16 was made in good faith under section 877.6(a)(1), the intent and policies underlying section 877.6  
17 generally require courts to take into account a number of factors: (1) a rough approximation of the  
18 plaintiff’s total recovery and the settlor’s proportional liability in view of the settlement amount;  
19 (2) the amount paid in settlement; (3) the allocation of settlement proceeds among plaintiffs; (4)  
20 the recognition that a settlor should pay less in settlement than he would if he were found liable  
21 after trial; (5) the financial conditions and insurance policy limits of the settling tortfeasor; and (6)  
22 the existence of collusion, fraud or tortious conduct intended to injure the interests of the non-  
23 settling parties. *Id.* at 499-500.

24 But “[o]nly when the good faith nature of a settlement is disputed, [is it] incumbent upon  
25 the trial court to consider and weigh the *Tech-Bilt* factors.” *City of Grand Terrace v. Superior Ct.*,  
26 192 Cal. App. 3d 1251, 1261 (1987). In other words, when no party opposes a good faith  
27 settlement application, “the barebones motion which sets forth the ground of good faith,  
28 accompanied by a declaration which sets forth a brief background of the case is sufficient[,]” and

1 the court need not consider the *Tech-Bilt* factors. *Id.*

## 2 DISCUSSION

3 The Motion, together with the Kampfner and Akhunova declarations, set forth the basis for  
4 the good faith settlement and the background of the case. Because Mr. Kessel has not opposed the  
5 Motion<sup>2</sup>, consideration of the *Tech-Bilt* factors is unnecessary. *See PAG-Daly City, LLC v.*  
6 *Quality Auto Locators, Inc.*, 2014 WL 807415, at \*2 (N.D. Cal. Feb. 27, 2014) (“Because no party  
7 contests the motion, it is unnecessary to weigh the *Tech-Bilt* factors.”); *Schaeffer v. Gregory Vill.*  
8 *Partners, L.P.*, 2015 WL 5316357, at \*2 (N.D. Cal. Sept. 11, 2015) (same).

9 In an abundance of caution, the Court nonetheless reviews the applicable *Tech-Bilt*  
10 factors.<sup>3</sup> Ultimately, the Court finds nothing about the consideration of these factors weighs  
11 against making a good faith settlement determination. First, Ms. Akhunova contends Mr. Kessel  
12 is primarily responsible for the wrongful conduct pleaded in the Amended Complaint. *See*  
13 Akhunova Decl. ¶ 14. Mr. Kessel has elected not to keep participating in the action, and  
14 accordingly has not provided any evidence contradicting Ms. Akhunova’s contentions. Plaintiff  
15 anticipates requesting a default judgment against Mr. Kessel in excess of \$1 million. Mot. at 7.  
16 The \$100,000 payment from Ms. Akhunova to Plaintiff represents a rough approximation of her  
17 proportional liability, with Mr. Kessel bearing the greater share of the total liability. Second, the  
18 payment represents the extent of Ms. Akhunova’s ability to pay—it constitutes more than her life  
19 savings and she will need to borrow from friends to raise the full amount. Akhunova Decl. ¶ 11.  
20 Third, the settlement amount is less than what Plaintiff demanded, and less than what they would  
21 seek at trial. Fourth, the other Participating Defendants, Formula VC Ltd and Formula VC GP,  
22 L.P., are defunct entities; Ms. Akhunova is the only Participating Defendant with assets. *Id.* ¶ 9.  
23 Finally, the Settling Parties declare the Settlement was reached after arm’s-length bargaining that  
24 lasted several months; that there was no collusion among the Settling Parties; and that several  
25 offers were made involving all defendants. *Id.* ¶ 8; *see also* Kampfner Decl. ¶ 3. They represent

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28 <sup>2</sup> The Motion was served on Mr. Kessel’s attorney of record by the Court’s ECF system, and she  
forwarded the documents to Mr. Kessel on July 12, 2016. *See* Dkt. No. 79 (proof of service).

<sup>3</sup> There is only one plaintiff in the action.

1 there are no agreements of any kind among the Settling Parties, other than those described in the  
2 Settlement Agreement. Akhunova Decl., ¶ 13, Kampfner Decl., ¶ 4.

3 The Court accordingly finds the Settlement is adequate and reasonable under the  
4 circumstances and is made in good faith pursuant to section 877.6. Based on these findings, and  
5 having received no opposition, the Court recommends granting the Motion.<sup>4</sup>

6 **CONCLUSION**

7 For the foregoing reasons, the Court **recommends** the District Judge:

- 8 (1) **GRANT** the Motion for Good Faith Determination of Settlement pursuant to  
9 California Code of Civil Procedure sections 877 and 877.6;
- 10 (2) **APPROVE** the Settlement, which is attached as Exhibit A to the Akhunova  
11 Declaration;
- 12 (3) **ORDER** barred all claims against the Participating Defendants for contribution  
13 and/or indemnity by any other party to this action, or any other joint tortfeasor or  
14 co-obligor, related to the claims that were presented or could have been presented  
15 in this action; and
- 16 (4) **DISMISS** with prejudice all claims, cross-claims, and counterclaims asserted  
17 between Plaintiff and the Participating Defendants.

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25 <sup>4</sup> The Court is satisfied that due process requirements prevent misuse of the good faith settlement  
statute in the absence of nonsettling defendants. The determination of a good faith settlement is  
not limitless: “[A]n unnamed joint tortfeasor whose potential liability is known, or reasonably  
should be known, to the settling parties but who is given no opportunity to be heard . . . is not  
bound by a good faith determination[.]” *City of Emeryville v. Robinson*, 621 F.3d 1251, 1266 (9th  
Cir. 2010) (quotation omitted). Mr. Kessel’s prior counsel sent him a copy of the Motion, and he  
was given the opportunity to oppose it; he did not do so.

1 Pursuant to Federal Rule of Civil Procedure 72, any party may serve and file objections to  
2 this report and recommendation within 14 days after being served with a copy.

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4 **IT IS SO ORDERED AND RECOMMENDED.**

5 Dated: August 15, 2016

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7 MARIA-ELENA JAMES  
United States Magistrate Judge

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United States District Court  
Northern District of California